

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

APPLE COMPUTER, INC.,

Opposer,

v.

MEMBRAN LLC,

Applicant.

Opposition No. 91171199

In the matter of Application
Serial No. 78590316 for
"PODIBLE"

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant answers the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1-8, and 10 of the Notice of Opposition and therefore, on that basis, denies each and every allegation therein.
2. Applicant admits that the Application speaks for itself. Except as admitted herein, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Notice of Opposition and therefore, on that basis, denies each and every allegation therein.
3. Applicant denies the allegations contained in Paragraphs 11-13 of the Notice of Opposition.
4. Applicant admits the first sentence of Paragraph 14 of the Notice of Opposition. Except as admitted herein, Applicant denies the remaining allegations of Paragraph 14 of the Notice of Opposition.
5. Further, if any allegations should remain unanswered, Applicant denies each and every unanswered allegation in the Notice of Opposition.



06-09-2006

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AFFIRMATIVE DEFENSES

In addition to the foregoing, and as separate and distinct affirmative defenses to Opposer's claims, Applicant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

6. iPod is generic for the goods and services offered by Opposer in connection with the term iPod.

SECOND AFFIRMATIVE DEFENSE

7. Opposer is estopped from contesting Applicant's application on the basis of waiver, acquiescence and/or estoppel in view of the great number of entities using the term POD in connection with goods related to those of Opposer and Applicant.

THIRD AFFIRMATIVE DEFENSE

8. Petitioner has failed to state a claim for which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

FOURTH AFFIRMATIVE DEFENSE

9. In terms of the mark at issue, the term POD is being used in a primarily descriptive sense.

WHEREFORE, Applicant requests that the Notice of Opposition be denied.

Respectfully submitted,
MEMBRAIN LLC.

Dated: June 6, 2006


By: 

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CERTIFICATE OF MAILING

I hereby certify that on June 7, 2006, the original of the foregoing document is being deposited with the United States Postal Service, first class mail, postage prepaid, addressed to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, Virginia 22213-1451.



Judy Hodges

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2006, a copy of the foregoing document is being deposited with the U.S. Postal Service, first class mail, postage prepaid, addressed to Jennifer D. Arkowitz, Townsend and Townsend and Crew LLP, Two Embarcadero Center, 8th Floor, San Francisco, CA 94111-3834, attorneys for Opposer



Judy Hodges